IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30-07-2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Second Appeal No.2002 of 2003

Krishna Gounder .. Appellant./ Plaintiff

Versus

1.Arjuna gounder
2.Kasirajan
3.Rajendiran
4.Muthusamy
5.Devaraj
6.Krishnan
7.Mahavishnu
8.The Superintending Engineer,
Vengikkal, Vellore Road,
Tamil Nadu Electricity Board.
Thiruvannamalai. .. Respondents./ Defendants

Appeal against the judgment and decree, dated 31.03.2003, passed in A.S.No.77 of 2001, on the file of the Additional District Court, Thiruvannamalai, confirming the judgment and decree, dated 18.04.2001, passed in O.S.No.997 of 1992, on the file of the II Additional District Munsif Court, Thiruvannamalai.

For Appellant : Mr.J.Ramakrishnan for
M/s.Sarvabhauman Associates

For Respondents : Mr.K.S.Karthik Raja for
Mr.T.R.Rajaraman

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J U D G E M E N T

This second appeal has been filed against the judgment and decree, dated 31.03.2003, passed in A.S.No.77 of 2001, on the file of the Additional District Judge, Thiruvannamalai, confirming the judgment and decree, dated 18.04.2001, passed in O.S.No.997 of 1992, on the file of the II Additional District Munsif, Thiruvannamalai.

2. The plaintiff in the suit in O.S.No.997 of 1992, on the file of the II Additional District Munsif, Thiruvannamalai, is the appellant in the present second appeal. The plaintiff had filed the

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suit, praying for a judgment and decree, declaring the plaintiff's title to the suit properties; to direct the plaintiff to take delivery of the suit properties through the process of Court from the defendants 1 to 7; for a direction directing the 8th defendant to effect the transfer of S.C.No.452 to the Well in S.No.333/4 in the name of the plaintiff by means of an order of mandatory injunction; for costs of the suit and for other reliefs.

3. The brief facts of the case, as stated by the plaintiff, are as follows:

a) The plaintiff and the defendants 1 and 2 are the sons of Peruma Gounder @ Velu Gounder. Peruma Gounder's father Muthusamy Gounder had two sons namely, Peruma Gounder and Mannu Gounder. Peruma Gounder was given in adoption to Chinnamanna Gounder, under a registered Adoption Deed, dated 02.10.1919, according to the custom prevailing in their community. Thus, Peruma Gounder, after being given in adoption, was not entitled to inherit any of the properties of his natural father Muthusamy Gounder. Therefore, Mannu Gounder became entitled to inherit the entire properties of Muthusamy Gounder. By a settlement deed executed by Muthusamy Gounder, on 03.04.1942, the schedule mentioned properties and other properties were settled in favour of Mannu Gounder. Having accepted the settlement deed dated 03.04.1942, Mannu Gounder had taken possession of the properties concerned. Mannu Gounder had no issues. After the death of Mannu Gounder, his wife Visalakshi Ammal enjoyed the properties described in the settlement deed, dated 03.04.1942.

b) The plaintiff had taken possession of the schedule mentioned properties and enjoyed the same as his own with the knowledge of Visalakshi Ammal. The plaintiff had erected an electric pump set in the first item of the suit property and had also obtained service connection bearing S.C.No.452. Visalakshi Ammal had executed a registered release deed in favour of the plaintiff, on 25.12.1972, accepting the title of the plaintiff. The plaintiff had also transferred the patta in his name and had also paid kist for the suit properties.

c) The plaintiff's father had filed a suit for partition in O.S.No.2 of 1973, on the file of the Subordinate Judge, Thiruvannamalai, in which the plaintiff and the first and second defendants were shown as defendants 1 to 3. Since the trial Court had dismissed the suit, an appeal was filed in A.S.No.800 of 1974 before the High Court, Madras. The High Court had dismissed the appeal in A.S.No.800 of 1974. The plaintiff, who was the first defendant in O.S.No.2 of 1973, had prescribed his title by adverse possession. Therefore, the defendants 1 to 7 do not have any right in the suit properties.

4. In the written statement filed on behalf of the defendants 1 and 2, which was adopted by the defendants 3 to 7, the claims made by the plaintiff had been denied. Peruma Gounder and his brother Mannu Gounder were living jointly and enjoying the suit

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lands and other lands. It is wrong to allege that Peruma Gounder was not entitled to inherit any of the properties of his ancestral father. It is also false to allege that Muthusamy Gounder had executed a settlement deed in favour of his son Mannu Gounder, on 03.04.1942. Since the suit properties and other properties were the ancestral joint family properties of Muthusamy Gounder, he had no right to settle the undivided Hindu joint family properties in favour of his son Mannu Gounder by way of a registered settlement deed alleged to have been made, on 03.04.1942. Mannu Gounder had never accepted the said Settlement Deed, dated 03.04.1942, and he never took possession of the suit properties and other properties in pursuance of the said settlement deed. Mannu Gounder had never enjoyed the suit properties exclusively based on the settlement deed, dated 03.04.1942.

5. It has been further stated that after the death of Mannu Gounder, his undivided share in the suit properties and other properties devolved upon his brother Peruma Gounder as per the rule of survivorship. Mannu Gounder was issueless and his wife Visalakshi Ammal never enjoyed the suit properties or other properties and she did not inherit the suit properties. The plaintiff had never installed any electric pump set in the suit well and he had never obtained any service connection bearing S.C.No.452. The plaintiff had never been in possession and enjoyment of the suit properties. Visalakshi Ammal had filed a suit in O.S.No.490 of 1948, praying for a declaration of title to the suit properties and for recovery of possession on the ground that the defendants therein had trespassed into the suit properties.

6. It has been further stated that a compromise decree was passed, on 22.12.1949. As per the terms of the said compromise decree, the first defendant paid a sum of Rs.500/- to the plaintiff Visalakshi Ammal. Therefore, the grand mother of the defendants, namely, Chinna Kulandai Ammal became the absolute owner of the suit lands and other lands by virtue of the said compromise decree passed in O.S.No.490 of 1948. It has been clearly stated in the compromise decree that Visalakshi Ammal had no right or title over the suit properties. By suppressing the compromise decree, dated 22.12.1949, the plaintiff has filed the suit which is to be dismissed. Since Peruma Gounder became very old, he divided the suit properties and other properties into three shares and allotted one share each to his sons and he did not take any share for himself in the said partition. With the consent of Peruma Gounder, the plaintiff and the defendants 1 and 2 had divided their properties under a Koorchit, dated 10.09.1962. Since the plaintiff and the defendants 1 and 2 are the parties to the said Koorchit, they are bound by it.

7. It has been further stated that under the Koorchit, the southern 1.71 acres in the suit first item had been allotted to the share of the first defendant. The northern 1.71 acres in the suit first item had been allotted to the share of the second defendant. The first defendant was allotted the western ½ measuring 0.06-1/2

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acres, whereas, the eastern half measuring 0.06-1/2 acres had been allotted to the share of the second defendant. Thus, the first defendant became the absolute owner of the southern 1.71 acres in the suit first item and the western half measuring 0.06-1/2 acres in the suit second item. The second defendant is the absolute owner of the northern 1.71 acres in the suit first item and the eastern 0.06-1/2 acres in the suit second item. However, since the date of partition, the respective sharers have been separately enjoying their respective shares and continuously been in possession well over the statutory period and had prescribed their title by way of adverse possession.

8. In fact, the plaintiff had sold some of the properties, which he had got under the said koorchit, in favour of one Kuppa Gounder, S/o Ponnusamy Gounder of Vedanthavadi Village, under a registered sale deed, dated 25.02.1966. Kuppa Gounder had taken possession of the said properties on the date of purchase and since then, he had been in possession and enjoyment of his properties. The second defendant had purchased the properties from Kuppa Gounder under a Registered Sale deed, dated 28.02.1967. Since then the second defendant had been in continuous possession and enjoyment of the suit properties. The patta for the suit items of the properties had also been transferred in favour of the second defendant in Patta No.1105. Since the plaintiff has no right or title over the suit properties, his prayer for declaration of title cannot be granted. Since the defendants 1 and 2 are in lawful possession and enjoyment of the respective suit shares, they are not liable to deliver possession of the suit properties to the plaintiff. Since the second defendant is the absolute owner of the 5 HP electrical pump set at Vedanthavadi Village and obtained service connection No.452, the said service connection should not be transferred from the well in S.No.75/2 to the well in S.No.333/4 under the name of the plaintiff. Thus, the plaintiff is not entitled to get the reliefs prayed for in the suit. Therefore, the suit is to be dismissed with costs.

9. In the written statement filed on behalf of the 8th defendant, it has been stated that the plaintiff has no right to request for the transfer of the said service connection. Further, S.C.No.452 of Vedanthavadi Village stands in the name of Kasi Rajan S/o. Velu Gounder from the beginning. As the plaintiff is not the owner of S.C.No.452, he has no right to request for transfer of the service connection to the well in S.No.333/4.

10. Based on the averments made on behalf of the plaintiff, as well as the defendants, the trial Court had framed the following issues for consideration:

> "1) Whether it is correct to state that Peruma Gounder @ Velu Gounder had been given in adoption to Chinnamanna gounder by way of the Adoption Deed dated 02.10.1919, is it valid?
>
> 2) Whether the settlement deed dated 03.04.1942 is true and valid?

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3) Whether the release deed, dated 25.12.1972, is true and valid and whether it would bind the defendants?

4) Whether it is correct to state that the suit properties and other properties belong to Chinna Kulandai Ammal based on the decree made in O.S.No.490 of 1948, dated 22.12.1949.

5) Whether it is true that the plaintiff and the defendants 1 and 2 have divided their shares in accordance with the Koorchit, dated 10.09.1962.

6) Is it true that the defendants 1 and 2 had been allotted the suit property in accordance with the Koorchit?

7) Whether the plaintiff has got title to the suit properties by way of adverse possession?

8) Whether it is true that the defendants 1 and 2 had trespassed into the suit properties in the year 1990?

9) Whether it is true that the plaintiff is the owner of the service connection No.452?

10) Whether the plaintiff is entitled to the relief of declaration and possession?

11) Whether the plaintiff is entitled to the relief of mandatory injunction?

12) What other reliefs the plaintiff is entitled to?"

11. Based on the evidence available, the trial Court had found that the adoption deed, dated 02.10.1919, is true and valid. The trial Court had also found that by Ex.A-2, dated 03.04.1942, Muthusamy Gounder had executed a settlement deed in favour of Mannu Gounder in order to avoid any dispute that might arise between Peruma Gounder and Mannu Gounder in view of the fact that Peruma Gounder had been given in adoption by an adoption deed, dated 02.10.1919. Further by a compromise decree made in O.S.No.490 of 1948, Visalakshi Ammal, the mother-in-law, namely, China Kulandai Ammal had become entitled to the suit property. With regard to the adverse possession, the trial Court had found that the plaintiff had not proved by sufficient evidence that he had continuous and uninterrupted possession of the suit property, in order to claim title by adverse possession. With regard to the Koorchit, dated 10.09.1962, the trial Court had found that the Koorchit is valid and according to it, the first and second items of the suit schedule properties have been allotted to the first and second defendants in the suit and the plaintiff has not proved that he has been in enjoyment of the electricity service connection No.452 as claimed by him.

12. Further, the trial Court had also found that since the defendants 1 and 2 have been in possession and enjoyment of the suit properties, in accordance with the Koorchit, dated 10.09.1962, the question of their trespass into the suit properties does not arise. In such circumstances, the trial Court had dismissed the suit.

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13. Aggrieved by the judgment and decree of the trial Court, dated 18.04.2001, the plaintiff had filed an appeal before the lower Appellate Court in A.S.No.77 of 2001. The lower Appellate Court had framed the points for consideration as to whether the grounds of appeal preferred by the appellants are tenable and entertainable. The lower Appellate Court had confirmed the judgment and decree of the trial Court holding that the plaintiff had no right or title over the suit properties as claimed by him.

14. The lower Appellate Court had found that the Koorchit, dated 10.09.1962 is valid and that the shares allotted in accordance with the Koorchit have been separately enjoyed by all the sharers including the plaintiff. It was also found that the plaintiff had sold some of the properties which he had got under the Koorchit, namely, 0.28 acres in Wet S.No.308/2 and 0.12 acres, along with the shares in the Well in S.No.311/7 in Wet S.No.311/5, in favour of Kuppa Gounder of Vedanthavadi Village, under a Registered Sale deed, dated 25.02.1966, marked as Ex.B-4. The said Kuppa Gounder in turn had sold the said two items of properties to the second respondent under a sale deed, dated 28.02.1967, marked as Ex.B5.

15. The lower Appellate Court had also found that a compromise decree had been passed in O.S.No.490 of 1948 as seen from the suit extract register, marked as Ex.B-1, whereby a compromise had been arrived at amongst Visalakshi Ammal as the plaintiff in the said suit and Chinnakozhandhai Ammal and Peruma Gounder as the defendants in the said suit. Accordingly, Visalakshi Ammal had ceased to have any right or interest or title over the suit properties. Consequently, the release deed, dated 25.12.1972, marked as Ex.A-29 and the registered copy Ex.A-3 executed by her in favour of the appellant cannot be said to be valid in the eye of law. Further, the lower Appellate Court has also found that the plaintiff had not proved the essential ingredients necessary in a claim for adverse possession. Since the plaintiff has not been in a position to prove that he has been in enjoyment of the suit properties openly, peacefully and continuously for more than 12 years as required under law, his claim for adverse possession cannot be accepted and in such circumstances, the lower Appellate court had confirmed the judgment and decree of the trial Court, dated 31.03.2003.

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16. Aggrieved by the judgment and decree of the lower Appellate Court, the plaintiff in the suit O.S.No.997 of 1992 had filed the present second appeal.

17. The second appeal has been admitted on the following substantial questions of law:

> "In the absence of reference to the suit property in Ex.B-1 whether the findings of the Courts below are perverse?"

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18. The learned counsel appearing for the appellant had submitted that the judgment and decree of the Courts below are erroneous as they have failed to see that Ex.B-1 suit register extract does not relate to the suit property. However, since the finding with regard to the adoption had become final, the lower Appellate Court ought to have held that Peruma Gounder @ Velu Gounder had no right in the suit property. It was also contended that the Courts below had failed to see that the suit property belongs only to Mannu Gounder and the same was inherited by his wife Visalakshmi Ammal and it was released in favour of the appellant. The Courts below had also erred in coming to the conclusion that the suit property belonged to Chinna Kulandai Ammal, mother-in-law of Visalakshi Ammal. Further, the Courts below had wrongly rejected the claim of the plaintiff with regard to adverse possession.

19. The learned counsel appearing on behalf of the respondents had submitted that the suit property is the ancestral property and after the death of Muthusamy Gounder it had devolved on his two sons Peruma Gounder and Mannu Gounder. Since Mannu Gounder had no issues after his death, the share of Mannu Gounder had passed on to Peruma Gounder. According to the Koorchit, made in the year 1962, the properties have been divided and having accepted the Koorchit, the plaintiff had sold some of the properties in favour of Kuppa Gounder, Son of Peruma Gounder of Vedanthavadi Village, under a registered Sale deed, dated 25.02.1966. Kuppa Gounder had in turn sold the said properties to the second respondent under a sale deed, dated 28.01.1967 and therefore, the appellant had no right or title over the suit properties as claimed in the suit. With regard to the adverse possession, the learned counsel appearing on behalf of the respondent had stated that the plaintiff had not shown sufficient proof or evidence that he was in continuous enjoyment of the suit properties. Even the correct date of coming into possession of the suit property has not been mentioned by the plaintiff.

20. On analysing the rival contentions and on a perusal of the evidence available on record, this Court is of the considered view that the Courts below have come to the right conclusion of dismissing the suit filed by the plaintiff. Both the courts below have rightly found that the adoption of Peruma Gounder by the adoption deed, dated 02.10.1919, was valid in law. However, according to the compromise decree passed in O.S.No.401 of 1948, Visalakshi Ammal had released her right in her share of the property. Both the Courts below had concurrently found that the Koorchit, dated 10.09.1962, marked as Ex.B-4, is valid and the plaintiff had sold all the properties he had got by way of the division made in accordance with the Koorchit. However, the Courts below had also found that the plaintiff in the suit O.S.No.997 of 1992, and the appellant in the present second appeal, has not been able to prove his title over the suit properties by adverse possession.

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21. In such circumstances, this Court is of the view that the appellant has not shown sufficient cause or reason to interfere with the judgment and decree of the Courts below. Therefore, the judgment and decree made in O.S.No.997 of 1992 and confirmed by the judgment and decree made in A.S.No.77 of 2001 cannot be interfered with by this Court in the present second appeal. Accordingly second Appeal is dismissed. Consequently, connected C.M.P.No.18279 of 2003 is closed. No Costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The II Additional District Munsif,
Tiruvannamalai.

2. The Additional District Judge,
Tiruvannamalai.

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The Record Keeper,
VR Section, High Court, Madras.

1 cc to M/s. Sarvabhuman Associates, Advocate, sr. 47242

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